



Attorney's Docket No. 09010-029008 / DIVER 1370-6

1652

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jay M. Short et al.

Art Unit : 1652

Serial No. : 09/777,566

Examiner : Delia M. Ramirez, Ph.D.

Filed : February 5, 2001

Title : RECOMBINANT BACTERIAL PHYTASES AND USES THEREOF

Commissioner for Patents

P.O. Box 2327

Arlington, VA 22202

#13
D.Q.J.
6/4/03

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

Responsive to the Election/Restriction Requirement Office Action mailed March 7, 2003, Applicants respectfully request entry of the amendment and consideration of the remarks set forth herein. A response to the Office Action is originally due April 7, 2003. Accordingly, this response is timely filed.

The following document is enclosed herewith:

- Postcard.

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I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 2327, Arlington, VA 22202.

4/7/2003

Date of Deposit



Signature

Debrah K. Sim

Typed or Printed Name of Person Signing Certificate

REMARKS

Status of the Claims

Pending claims

Claims 1-15 as filed are pending.

The Restriction Requirement

The Patent Office has alleged that the pending claims of the application are directed to three separate and distinct inventions under 35 U.S.C. §121:

The instant application has been restricted to one of the following inventions under 35 U.S.C. §121:

Group I: Claims 1-13, drawn in part to an expression system comprising a nucleotide encoding the polypeptide of SEQ ID NO:2, host cells comprising said expression system, and a method of producing the polypeptide of SEQ ID NO:2, classified in class 536, subclass 23.2.

Group II: Claims 12 and 13, drawn in part to a plant or a method to produce the polypeptide of SEQ ID NO:2 with said plant, classified in class 800, subclass 4.

Group III: Claims 14 and 15, drawn to a feed composition comprising the polypeptide of SEQ ID NO:2 and a method to treat humans or animals with said composition, classified in class 424, subclass 94.6.

The Election

In response to the Restriction Requirement, Applicants elect Group I, claims 1-13, drawn in part to an expression system comprising a nucleotide encoding the polypeptide of SEQ ID NO:2, host cells comprising said expression system, and a method of producing the polypeptide of SEQ ID NO:2, with traverse.

Applicants respectfully request reconsideration of the restriction and request that claims 12 and 13 of Group II and claim 14 of Group III also be examined in the present application. Claims 12, 13, and 14 all depend either directly or indirectly from claim 1, and incorporate all the limitations thereof. Applicants submit that because of this, examination of claims 12, 13, and 14 in the present application would not create an undue burden on the examiner. For example, if the expression system of claim 1 is found to be allowable, then the composition claims and method claim, which contain all the limitations of claim 1, must be

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allowable as well. Therefore, Applicants respectfully submit that examination of claims 12, 13, and 14, along with elected claims 1-13, would not be unduly burdensome.

According to MPEP 803, "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Therefore, Applicants respectfully request rejoinder of claims 1-14 in the present application.

Applicants believe that no fee is required for submission of this Response. However, if a fee is required, the Commissioner is authorized to deduct such fee from the undersigned's Deposit Account No. 06-1050. Please credit any overpayment to the above-noted Deposit Account.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858 678 5070.

Respectfully submitted,

Date: 4/7/2003


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